IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.892 OF 2007

S.P.Fabricators Pvt.Ltd. ..Petitioner

Vs.

Union of India & Ors. ..Respondents

Mr.Sridharan with Mr.T.Vishvanathan i/b.M/s.PDS Legal
for the Petitioner.
Mr.P.S.Jetly with Mr.Parag Vyas for the Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
J.P.DEVADHAR,JJ.

DATE : 21ST FEBRUARY,2007

P.C.

1. Heard the learned Counsel for the parties.

Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents waives service. By consent taken up for hearing.

2. By this Petition, the Petitioner is challenging the order dated 29th December,2006 passed by the CESTAT. The brief facts are, that in the aforesaid order, the CESTAT had merely proceeded on the basis that the earlier order of the Commissioner (Appeals) setting aside the Deputy Commissioner's order has already been acted upon as the matter was readjudicated. It appears that the Deputy Commissioner, in his Order in Original dated 16th

April, 2004 held in favour of the Petitioner, and dropped the show cause notice issued to the Petitioner. Aggrieved thereby the Respondent-Revenue had filed an Appeal before the Commissioner (Appeals) and the same was allowed on 18th March,2005. Aggrieved thereby the Assessee had filed an Appeal before the CESTAT. The said Appeal was admitted, however, the stay application sought in the said Appeal was rejected by the CESTAT by order dated 26th July,2005 on the ground that there was no demand against the Petitioner.

3. During the pendency of the above Appeal, the Commissioner had adjudicated the show cause notice and passed an exparte order on 30th September,2005 confirming the demand. Aggrieved thereby, the Petitioner had moved CESTAT and the CESTAT, in the Appeal had set aside the same and remanded back the matter to the Commissioner (Appeals) by an order dated 19th April,2006 for a De-Novo adjudication and the matter is pending before the Commissioner (Appeals). The present order has been passed by the CESTAT against the order dated 18th March,2005 passed by the Commissioner. The Tribunal has merely proceeded on the basis that the matter was remanded back and also the Commissioner's order has already been acted upon. On the contrary, the Tribunal ought to have decided on merit the order dated 18th March,2005 against which the present Appeal was filed before the CESTAT. The

main issue before the Tribunal was whether the Deputy Commissioner had pecuniary jurisdiction to adjudicate the show cause notice, which issue ought to have been decided by the CESTAT.

4. In this behalf, the learned Counsel for the Petitioner brought to our notice the judgment of the Hon'ble Supreme Court in the case of **Nagesh Datta Shetti and Others Vs. State of Karnataka, 2005 (10) SCC 383**, wherein the Hon'ble Supreme Court has in almost similar circumstances held that the Division Bench should have considered the matter on merits without concluding that the writ appeal had become infructuous. In view thereof, under the aforesaid circumstances, we are inclined to quash and set aside the order dated 29th December,2006 and remand back the matter to CESTAT to decide the aforesaid issue whether the Deputy Commissioner had the pecuniary jurisdiction to adjudicate upon the show cause notice. CESTAT shall decide the same strictly on its own merits in accordance with law. Rule is accordingly made absolute.

(J.P.DEVADHAR,J.) **(DR.S.RADHAKRISHNAN,J.)**